IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 225 of 2007
In
COMPANY PETITION No. 102 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JK PAPER LIMITED - Applicant(s)
Versus
. - Respondent(s)

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Appearance :
SINGHI & CO for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/05/2007

ORAL JUDGMENT

1. Present Judges' Summons has been taken out

by the applicant – J.K.Paper Limited for an appropriate order for dispensing with the procedure laid down under Section 101(2) of the Companies Act, 1956 (for short “the Act”) as regards the creditors.

2. It is submitted in affidavit-in-support of the Summons for Directions that the applicant has filed Company Petition No.102 of 2007 for various order including prayers for reduction of Share Capital. The averments made and the contentions raised in the Company Petition No. 102 of 2007 be treated as part and parcel for the present Application as if the same are incorporated herein. It is submitted on behalf of the applicant that the Company had issued 52,00,000 (Fifty Two Lacs) 3.75% Cumulative Redeemable Preference Shares of Rs.100/- (One Hundred only) each (“CRPS”), aggregating to Rs.52,00,000/- (Rupees Fifty Two Crores) and the said CRPS carry a fixed cumulative preferential dividend of 3.75% per annum and are to be redeemed by the Company in three installments of Rs.30, Rs.30 and Rs.40 per CRPS on 29.11.2017, 29.11.2018 and 29.11.2019 respectively. It is further submitted that 3.75% preference dividend on the CRPS has been

impairing the equity shareholders earnings and to improve the financial of the Company and to increase the share of profit available to the Equity Shareholders, it is considered desirable that the above said 52,00,000 (Fifty Two Lacs) CRPS aggregating to Rs.52,00,000/- (Rupees Fifty Two Crores) be converted into an Unsecured Loan of Rs.52,00,000/- (Rupees Fifty Two Crores) in favour of the holders of the said CRPS with effect from 01.07.2006 on the terms and conditions mentioned by the Company. It is further submitted that the Shareholders of the applicant Company in the Extra Ordinary General Meeting held on 17th March, 2007 have unanimously passed the Special Resolution for reduction of share capital of the Company by way of conversion with effect from 1st July, 2006 of the aggregate paid-up value of 52,00,000 (Fifty Two Lacs) 3.75% fully paid up Cumulative Redeemable Preference Shares of Rs. 100 (Rupees One Hundred only) each (“CRPS” or “3.75% CRPS”) of the Company amounting to Rs.52,00,000/- (Rupees Fifty Two Crores) into an Unsecured loan of Rs. 52,00,000/- (Rupees Fifty Two Crores) in favour of the holders of the said CRPS on

the terms and conditions mentioned in the said Resolution. It is further submitted that the proposed reduction does not involve diminution of any liability in respect of unpaid capital or the payment to any shareholders of any paid-up Share Capital. It is submitted that since the proposed terms of the Unsecured Loan are almost similar to that of CRPS being canceled or extinguished, it is submitted that the proposed reduction will not have any material adverse effect on the liquidity position of the Company and correspondingly, on the interest of the Shareholders and other creditors of the Company. Under the circumstances, it is requested to dispense with the procedure laid down under Section 101(2) of the Act.

3. Shri Mihir Thakore, learned Senior Advocate appearing on behalf of the applicant has submitted that 3.75% CRPS are being converted into Unsecured Loan with the same interest rate and with same redemption dates. It is also further submitted that the shares are redeemable as per Section 80(1)(a) of the Companies Act, 1956. It is also further submitted that the Company is profit making Company having

substantial reserve. It is submitted that as on 30th June, 2006, the Company was having share capital of 131.71 Crores and was also having reserve and surplus of Rs.283.65 Crores. It is submitted on relying upon the balance sheet as on 30th June, 2006 that profit after tax was Rs. 35.52 Crores. It is also further submitted that Article 75 of the Articles of the Association of the Company authorizes for reduction of share capital subject to Section 100 of the Act and subject to confirmation of this Court.

4. Mr. Thakore, learned Senior Advocate has submitted that only in a case where the proposed reduction involves diminution of any liability in respect of unpaid capital or the payment to any shareholders of any paid-up Share Capital, procedure as required under Section 101(2) of the Act is required to be followed. However, in any other case procedure as contemplated under Section 101(2) of the Act is required to be followed only if the Tribunal or the Court so directs. Therefore, according to him a specific positive order or direction is required. He has further submitted that in a case where the proposed reduction of share capital involves either

diminution of any liability in respect of unpaid capital or the payment to any shareholders of any paid-up Share Capital, in that case also having regard to any special circumstances of the case, even the Court may pass an order to dispense with the procedure as required under Section 101(2) of the Act and the Court may pass an order directing that the provisions of Sub-section (2) shall not apply as regards any class or classes of creditors. It is submitted that so far as the present case is concerned, it falls in the category of “in any other case” and therefore, it is requested to allow the present application and issue an appropriate order of dispensing with the procedure laid down under Section 101(2) of the Companies Act, 1956 as regards the creditors.

5. Heard Shri Mihir Thakore, learned Senior Advocate appearing on behalf of the applicant Company. As per Section 100 of the Companies Act; subject to the confirmation by this Court, a Company limited by shares or a Company limited by guarantee and having a share capital, may, if so authoirsized by its articles, by special resolution, reduce its

share capital in any way; and in particular and without prejudice to the generality of the powers mentioned in clauses (a), (b) and (c) and may, if an so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly. Where the proposed reduction of share capital involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital and in any other case if the Court so directs, the procedure is required to be followed as regards the Creditors as laid down under Section 101(2) of the Act. It is submitted on behalf of the petitioner Company that the proposed reduction of share capital does not involve either the diminution of payment to any shareholder of any paid up share capital and therefore, clauses (a) and (c) of Section 100 would not be applicable. It is submitted that in the present case reduction of share capital is by way of converting share capital into Unsecured loan and therefore, the same would fall “in any other case”. Therefore, it is submitted that where the case falls “in any other case”, there shall be positive order

from the Court to follow procedure as required under Section 101(2) of the Companies Act.

6. Considering the Resolution and the averments in the application and the Company Petition, it is asserted on the part of the petitioner Company that proposed reduction of share capital does not involve either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital and that the applicant Company is authorized to reduce its share capital vide Article 75 of Articles of Association and special Resolution has been passed unanimously by the Equity Shareholders with respect to the proposed reduction of share capital by converting it into Unsecured Loan.

7. Considering above and also considering the fact that the applicant Company is a profit making Company and having substantial reserve and the averments as stated above, it is ordered that the procedure as required under Section 101(2) of the Companies Act, 1956 as regards the Creditors is not required to be followed and the present application is accordingly allowed. The procedure laid down under

Section 101(2) of the Companies Act, 1956 as regards the Creditors for the proposed reduction of share capital by converting into Unsecured loan is waived/ dispensed with. This application is accordingly disposed of. No costs.

[M.R.Shah, J.]

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